

1 MICHAEL M. LAUTER, Cal Bar No. 246048
JEANNIE KIM, Cal Bar No. 270713
2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
3 Including Professional Corporations
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4109
Telephone: (415) 434-9100
5 Facsimile: (415) 434-3947
Email: mlauter@sheppardmullin.com
6 jekim@sheppardmullin.com

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
8 A Limited Liability Partnership
Including Professional Corporations
9 THEODORE COHEN, Cal. Bar No. 151427
AARON J. MALO, Cal. Bar No. 179985
10 ANASTASIA K. BILLY, Cal. Bar No. 210416
SARAH A. K. BLITZ, Cal. Bar No. 280118
11 333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
12 Telephone: 213-620-1780
Facsimile: 213-620-1398
13

14 Attorneys for Plaintiff U.S. Bank National Association
(as successor in interest to MUFG Union Bank, N.A.)
15

16 IN THE UNITED STATES DISTRICT COURT,
17 EASTERN DISTRICT OF CALIFORNIA, FRESNO
18

19 U.S. BANK NATIONAL ASSOCIATION (as
20 successor in interest to MUFG Union Bank,
N.A.,

21 Plaintiff,

22 v.
23

24 DARIUS ASSEMI, an individual and as trustee
of the Amended and Restated Darius Assemi
Revocable Trust; FARID ASSEMI, an
25 individual, and as trustee of the Amended and
Restated Farid Assemi Revocable Trust, and as
26 trustee of the Farshid Assemi 1997 Ranch
Trust; FARSHID ASSEMI, an individual, as
27 co-trustee of the Amended and Restated Farshid
Assemi and Sonia Rosemary Assemi
28 Revocable Trust, and as co-trustee of the Farid

No.

**COMPLAINT FOR BREACH OF
CONTRACT**

1 Assemi 1997 Ranch Trust; SONIA
2 ROSEMARY ASSEMI, as co-trustee of the
3 Amended and Restated Farshid Assemi and
4 Sonia Rosemary Assemi Revocable Trust;
5 NEEMA ELIOT ASSEMI, as co-trustee of the
6 Farid Assemi 1997 Ranch Trust, and as trustee
of the Farid Assemi 2010 Grantor Trust dated
December 30, 2010; MELISSA LAYNE, as
trustee of the Farshid and Sonia Assemi 2010
Grantor Trust dated December 30, 2010; and
DOES 1-50 inclusive,

7 Defendants.

8
9 Plaintiff U.S. BANK NATIONAL ASSOCIATION, a national banking association and
10 successor-in-interest to MUFG Union Bank, N.A., a national banking association (“Plaintiff”)
11 alleges as follows:

12 **JURISDICTION & VENUE**

13 1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because
14 there is complete diversity of citizenship between the parties (Plaintiff is a citizen of Ohio, and all
15 defendants are citizens of California), and the amount in controversy exceeds \$75,000, exclusive of
16 interest and costs.

17 2. U.S. Bank’s main office is in Cincinnati, Ohio. U.S. Bank is therefore located in
18 Ohio. As such, for purposes of diversity jurisdiction, U.S. Bank is a citizen of Ohio. 28 U.S.C.
19 §1348.

20 3. Plaintiff is informed and believes and based thereon alleges that all of the defendants
21 are citizens of the State of California because all of them are domiciled in the State of California.

22 4. Venue is proper in this Court because all defendants are residents of California, and
23 at least one defendant resides in this judicial district. 28 U.S.C. §1391(a). Venue is also
24 independently proper in this Court because a substantial part of the events and omissions giving rise
25 to this action occurred in the County of Fresno, California. 28 U.S.C. §1391(b).

26 **INTRODUCTION**

27 5. Beginning in 2012, Plaintiff made a series of loans (the “Loans”) to various entities
28 comprising four related groups of borrowers referred to as the “Maricopa Borrower,” the “Lincoln

1 Borrower,” the “Panoche Borrower,” and the “Sageberry Borrower.” All such borrower entities are
2 collectively referred to hereinafter as “Borrowers.” Eventually, the maximum outstanding principal
3 balance of the Loans was increased to \$150,000,000.

4 6. To induce Plaintiff to extend such substantial Loans to the Borrowers, certain of the
5 Borrowers’ principals (collectively, the “Guarantors”) agreed to provide Plaintiff with guaranties of
6 the Borrowers’ indebtedness. Absent the additional sources for recovery represented by the
7 Guarantors, Plaintiff would not have made such sizable Loans to the Borrowers.

8 7. Now that the Borrowers have defaulted, Plaintiff brings this action to force the
9 Guarantors to make good on their obligations.

10 **PARTIES, JURISDICTION, AND VENUE**

11 8. U.S. Bank National Association (“U.S. Bank”) is a national banking association
12 chartered under the laws of the United States of America. At all relevant times, U.S. Bank was, and
13 now is, duly qualified and authorized to do business in California. U.S. Bank is the successor in
14 interest by merger to MUFG Union Bank, N.A., and has all of its rights, powers and interests in
15 connection with the subject matter of this action.

16 9. Plaintiff is informed and believes and based thereon alleges that Darius Assemi is,
17 and at all times material hereto was, an individual residing in and regularly conducting business in
18 and around the State of California, County of Fresno. Plaintiff is further informed and believes and
19 based thereon alleges that Darius Assemi is, and at all times material hereto was, the trustee of the
20 Amended and Restated Darius Assemi Revocable Trust, which was established under California
21 law. Darius Assemi, in his individual capacity and as trustee of the Amended and Restated Darius
22 Assemi Revocable Trust, is among the Guarantors.

23 10. Plaintiff is informed and believes and based thereon alleges that Farid Assemi is, and
24 at all times material hereto was, an individual residing in and regularly conducting business in and
25 around the State of California, County of Fresno. Plaintiff is further informed and believes and
26 based thereon alleges that Farid Assemi is, and at all times material hereto, the trustee of the
27 Amended and Restated Farid Assemi Revocable Trust, which was established under California law,
28 as well as the trustee of the Farshid Assemi 1997 Ranch Trust, which was established under

1 California law. Farid Assemi, in his individual capacity, as trustee of the Amended and Restated
2 Farid Assemi Revocable Trust, and as the trustee of the Farshid Assemi 1997 Ranch Trust, is among
3 the Guarantors.

4 11. Plaintiff is informed and believes and based thereon alleges that Farshid Assemi is,
5 and at all times material hereto was, an individual residing in and regularly conducting business in
6 and around the State of California, County of Fresno. Plaintiff is further informed and believes and
7 based thereon alleges that Farshid Assemi is, and at all times material hereto, a co-trustee of the
8 Amended and Restated Farshid Assemi and Sonia Rosemary Assemi Revocable Trust, which was
9 established under California law, as well as a co-trustee of the Farid Assemi 1997 Ranch Trust,
10 which was established under California law. Farshid Assemi, in his individual capacity, and as co-
11 trustee of the Farid Assemi 1997 Ranch Trust, is among the Guarantors.

12 12. Plaintiff is informed and believes and based thereon alleges that Sonia Rosemary
13 Assemi is, and at all times material hereto was, an individual residing in and regularly conducting
14 business in and around the State of California, County of Fresno, as well as a co-trustee of the
15 Amended and Restated Farshid Assemi and Sonia Rosemary Assemi Revocable Trust, which was
16 established under California law. Sonia Rosemary Assemi, in her capacity as co-trustee of the
17 Amended and Restated Farshid Assemi and Sonia Rosemary Assemi Revocable Trust, is among the
18 Guarantors.

19 13. Plaintiff is informed and believes and thereon alleges that Neema Eliot Assemi is,
20 and at all times material hereto was, an individual residing in and regularly conducting business in
21 and around the State of California, County of Fresno, as well as a co-trustee of the Farid Assemi
22 1997 Ranch Trust, which was established under California law, and the trustee of the Farid Assemi
23 2010 Grantor Trust dated December 30, 2010, which was established under California law. Neema
24 Eliot Assemi, in his individual capacity and in her capacity as a co-trustee of the Farid Assemi 1997
25 Ranch Trust, is among the Guarantors.

26 14. Plaintiff is informed and believes and thereon alleges that Melissa Layne is, and at
27 all times material hereto was, an individual residing in and regularly conducting business in and
28 around the State of California, County of Fresno, as well as the trustee of the Farshid and Sonia

1 Assemi 2010 Grantor Trust, which was established under California law. Melissa Layne, in her
2 capacity as trustee of the Farshid and Sonia Assemi 2010 Grantor Trust, is among the Guarantors.

3 15. The true names and capacities, whether individual, corporate, associate, or otherwise
4 of defendants Does 1 through 50, inclusive (collectively, the “Doe Defendants”), are unknown to
5 Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and
6 believes, and based thereon alleges, that each of the Doe Defendants was in some way responsible
7 for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and
8 in some fashion has legal responsibility therefore. When the true names of the Doe Defendants and,
9 as appropriate, their respective responsibility for, participation in, and contribution to the matters
10 and things herein alleged are ascertained by Plaintiff, Plaintiff will seek leave to amend this
11 Complaint to set forth the same. The Doe Defendants and the Guarantors are sometimes collectively
12 referred to hereinafter as the “Defendants.”

13 **GENERAL ALLEGATIONS**

14 **The Loans and the Loan Documents**

15 16. On or about March 25, 2019, Plaintiff and the Borrowers entered into various
16 documents in connection with the Loans (collectively, as thereafter modified, supplemented, and
17 amended from time to time, the “Loan Documents”), including that certain Second Amended and
18 Restated Loan and Security Agreement (the “Loan Agreement”), which amended and restated
19 certain prior documents associated with the Loans as set forth therein.

20 17. Concurrently therewith, on or about March 25, 2019, the Guarantors executed that
21 certain Fifth Amended and Restated Continuing Guaranty (as thereafter modified, supplemented,
22 amended, and reaffirmed from time to time, the “Continuing Guaranty”), which amended and
23 restated certain prior guaranties as set forth therein. Pursuant to the Continuing Guaranty, each of
24 the Guarantors guaranteed payment and performance of all of the Borrowers’ obligations to Plaintiff
25 under the Loan Documents and in connection with the Loans. Nonetheless, the Guarantors’ liability
26 under the Continuing Guaranty is limited to the maximum amount of \$114,000,000 in principal,
27 plus interest, fees, and charges thereon, as well as certain other amounts specified therein. A true
28

1 and correct copy of the Continuing Guaranty is attached hereto as **Exhibit A** and incorporated herein
2 by this reference.

3 18. The Loan Documents were thereafter further amended on a number of occasions.
4 Ultimately, the maximum principal balance of the Loans was changed to the increased amount of
5 \$149,000,000, plus an additional and separate \$11,580,840 (the “Harvest Line”), as reflected in,
6 among other things, that certain Ninth Amended and Restated Revolving Note dated December 13,
7 2022 executed by the Borrowers in favor of Plaintiff (the “Ninth Note”), that certain Harvest Line
8 Promissory Note dated October 30, 2024 (the “Harvest Note”) executed by the Borrowers in favor
9 of Plaintiff, and that certain Fifth Amendment to the Loan Agreement dated October 30, 2024 (the
10 “Fifth Amendment”) which also further amended the Ninth Note. The Ninth Note, the Harvest
11 Note, and the Fifth Amendment are among the Loan Documents. A true and correct copy of the
12 Ninth Note is attached hereto as **Exhibit B** and incorporated herein by this reference. A true and
13 correct copy of the Harvest Note is attached hereto as **Exhibit C** and incorporated herein by this
14 reference. A true and correct copy of the Fifth Amendment is attached hereto as **Exhibit D** and
15 incorporated herein by this reference.

16 19. The Guarantors consented to each of the amendments of the Loan Documents,
17 through and including the Fifth Amendment. In connection therewith, the Guarantors reaffirmed
18 the Continuing Guaranty and agreed that the Continuing Guaranty guarantees the Borrowers’
19 obligations to Plaintiff under the Loan Documents, as amended. Additionally, the Guarantors also
20 separately guaranteed payment and performance of all of the Borrowers’ obligations to Plaintiff in
21 connection with the Harvest Line. A true and correct copy of the Guaranty of Harvest Line
22 Commitment and Reaffirmation of Fifth Amended and Restated Continuing Guaranty dated
23 October 30, 2024 (the “Harvest Line Guaranty and Reaffirmation”), executed by all of the
24 Guarantors in connection with the Fifth Amendment, is attached hereto as **Exhibit E** and
25 incorporated herein by this reference.

26 20. In the Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation, the
27 Guarantors each waived all rights to require Plaintiff to proceed against the Borrowers, or to pursue
28 any other rights and/or remedies that Plaintiff might have.

21. But for the promises made by the Guarantors, Plaintiff would not have executed the Loan Documents, would not have agreed to the terms and conditions contained therein, and would not have extended the Loans to the Borrowers.

Breach of the Loan Documents

22. Borrowers breached the Loan Documents by failing to comply with numerous of the requirements set forth therein, beginning by on or about December 31, 2022, and continuing thereafter (each, an “Event of Default” and collectively, the “Events of Default”).

23. Under the Loan Documents, upon the occurrence of an Event of Default that is continuing, Plaintiff may, among other things, increase the rate of interest applicable to the Loans to the Default Rate (as defined in the Loan Documents), upon notice to the Borrowers. Additionally, without notice to the Borrowers, Plaintiff may, among other things, declare the entirety of the Loans immediately due and payable.

24. On multiple occasions during the second half of 2023 and the first half of 2024, Plaintiff provided notice to the Borrowers and the Guarantors regarding various Events of Default under the Loan Documents. Plaintiff also reserved all of its rights and remedies in connection with each such notice.

25. On or about June 20, 2024, Plaintiff sent a *Notice of Acceleration; Demand for Payment in Full; Notice of Implementation of Default Rate of Interest, and Reservation of Rights* to all of the Borrowers, advising them that as a result of the outstanding Events of Default, Plaintiff had declared all then-outstanding amounts in connection with the Loans immediately due and payable in full, implemented the Default Rate of interest, and was demanding payment in full. A true and correct copy of the *Notice of Acceleration; Demand for Payment in Full; Notice of Implementation of Default Rate of Interest, and Reservation of Rights* is attached hereto as **Exhibit F** and incorporated herein by this reference.

26. Thereafter, on or about September 15, 2024, Plaintiff sent all of the Guarantors a *Renewed Demand for Payment in Full; and Reservation of Rights*, advising them that Plaintiff had previously declared all then-outstanding amounts in connection with the Loans immediately due and payable in full, and demanding immediate payment by the Guarantors of all amounts then due

1 under the Loan Documents and the Continuing Guaranty. A true and correct copy of the *Renewed*
2 *Demand for Payment in Full; and Reservation of Rights* is attached hereto as **Exhibit G** and
3 incorporated herein by this reference.

4 27. As of October 18, 2024, the total principal balance then owing under the Loan
5 Documents was \$149,000,000, plus accrued and unpaid interest, plus certain other unpaid charges
6 due pursuant to the Loan Documents, plus additional interest, fees, and costs, including legal fees
7 and costs and other expenses incurred by Plaintiff (collectively, the “Prior Loan Balance”).

8 28. In the Fifth Amendment, each of the Borrowers acknowledged and agreed, among
9 other things, that (a) all of the Events of Default continued to exist, and had not been cured or
10 waived; (b) each of the Borrowers had received proper and adequate notice of the Events of Default;
11 (c) interest was accruing at the Default Rate; and (d) the Prior Loan Balance remained owing, and
12 was not subject to any credits or offsets.

13 29. Pursuant to the terms of the Fifth Amendment, the additional and separate amounts
14 owed by the Borrowers to Plaintiff in connection with the Harvest Line became fully due and
15 payable on November 7, 2024. Borrowers failed to pay the amounts due in connection with the
16 Harvest Line to Plaintiff on that date.

17 30. Therefore, on November 12, 2024, Plaintiff sent a notice of default to all of the
18 Borrowers, demanding payment in full of all amounts due in connection with the Harvest Line. A
19 true and correct copy of such notice of default is attached hereto as **Exhibit H** and incorporated
20 herein by this reference. To date, the Borrowers have failed to pay any such amounts to Plaintiff.

21 31. On November 12, 2024, Plaintiff sent a demand for payment to all of the Guarantors,
22 advising them of the Borrowers’ failure to repay all amounts due in connection with the Harvest
23 Line on November 7, 2024 as required, and demanding payment in full of all outstanding amounts
24 from the Guarantors. A true and correct copy of such demand is attached hereto as **Exhibit I** and
25 incorporated herein by this reference. To date, the Guarantors have failed to pay any such amounts
26 to Plaintiff.

27 32. As of November 12, 2024, the total principal balance due and owing under the Loan
28 Documents was \$160,580,840, comprised of \$149,000,000, plus an additional and separate

1 \$11,580,840 in connection with the Harvest Line, plus accrued and unpaid interest, plus certain
2 other unpaid charges due pursuant to the Loan Documents, plus additional interest, fees, and costs,
3 including legal fees and costs and other expenses incurred by Plaintiff (collectively, the
4 “Outstanding Balance”). Interest, legal fees and costs and other expenses, and certain other amounts
5 continue to accrue daily.

6 33. Despite Plaintiff’s demand therefor, the Guarantors have refused and neglected, and
7 continue to refuse and neglect, to cure the Events of Default existing under the Loan Documents,
8 the Continuing Guaranty, and the Harvest Line Guaranty and Reaffirmation, including, without
9 limitation, by failing and refusing to pay any portion of the Outstanding Balance. To date, the
10 entirety of the Outstanding Balance remains outstanding.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Contract)**

13 **(Against All Defendants)**

14 34. Plaintiff repeats and re-alleges each of the prior allegations in this Complaint, and
15 incorporates the same herein by this reference as though set forth in full.

16 35. Pursuant to the Continuing Guaranty and the Harvest Line Guaranty and
17 Reaffirmation, the Guarantors each unconditionally guaranteed all of the Borrowers’ obligations
18 under the Loan Documents, including, but not limited to, full and timely payment of all amounts
19 owing under the Loan Documents.

20 36. Plaintiff relied upon the Continuing Guaranty and the Harvest Line Guaranty and
21 Reaffirmation, and the Guarantors’ repeated reaffirmations of their obligations thereunder, in
22 agreeing to the Loan Documents and extending the substantial Loans to the Borrowers.

23 37. Plaintiff advised the Guarantors of the Events of Default on multiple occasions.
24 Plaintiff also expressly demanded payment in full from the Guarantors of all amounts owing in
25 connection with the Loans, including the separate amounts owing in connection with the Harvest
26 Line.

27 38. The Guarantors, and each of them, have breached their obligations under the
28 Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation by, among other things,

failing to cure the Events of Default, including, without limitation, by failing to pay to Plaintiff the full amount owed under the Loan Documents, subject to the limitations set forth in the Continuing Guaranty.

39. Plaintiff has performed all covenants, conditions and/or promises required to be performed in accordance with the terms and conditions of the Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation, except those were prevented, excused, or relieved by the Guarantors.

40. Under the terms of the Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation, the Guarantors are liable for all costs incurred by Plaintiff in enforcing its rights, including, without limitation, all attorneys' fees and costs and other expenses. Plaintiff has been compelled to employ Sheppard, Mullin, Richter & Hampton LLP to enforce its rights under the Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation, and Plaintiff has incurred and will continue to incur attorneys' fees in an amount unknown to Plaintiff at this time. Plaintiff is therefore entitled to recover its attorneys' fees and costs and other expenses in connection with this action.

41. As a direct and proximate result of the Guarantors' breaches of the Continuing Guaranty and the Harvest Line Guaranty and Reaffirmation, Plaintiff has sustained, and will continue to sustain, damages according to proof at trial, but in no event are those damages less than the Outstanding Balance. The Guarantors' liability is, however, capped according to the terms of the Continuing Guaranty, as set forth above, plus the separate amounts due and owing in connection with the Harvest Line.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each of the Guarantors, jointly and severally, as follows:

- A. For damages in amount to be proven at trial;
- B. For pre- and post-judgment interest;
- C. For an award of attorneys' fees and other expenses;
- D. For costs of suit incurred herein;

1 E. For such other amounts to be proven at trial; and

2 F. For all such other and further relief as the Court may deem just and proper.

3
4 Dated: November 13, 2024

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6 By

/s/ Jeannie Kim

7 MICHAEL M. LAUTER

8 JEANNIE KIM

9 Attorneys for Plaintiff

10 U.S. BANK, NATIONAL ASSOCIATION